



March 21, 2000

Mr. Thomas Keever
Assistant District Attorney
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2000-1103

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133202.

The Denton County Judge (the "county judge") received a request which seeks, in part, information generated by or received by the county judge. First, you assert that the requested information held by the county judge is not subject to the Public Information Act (the "Act"). Second, you argue that the broad nature of the request is not permitted by the Act. In the alternative, you assert that the information responsive to the request is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You have submitted for our review one document, labeled "Exhibit D," and state the remaining responsive information "would be subject to public disclosure if an appropriate public information request had been made." We have considered your arguments, the exceptions you claim, and reviewed the submitted information.

First, you assert that the office of the county judge is excluded from the scope of the Act because (1) it is not a "governmental body," as defined by section 552.003(1)(A) of the Government Code, and (2) it is a judicial office, and under the Act "'governmental body' . . . does not include the judiciary." Gov't Code § 552.003(1)(B). This office addressed substantially the same contention in Open Records Decision No. 204 (1978). There, a county judge had received a request for records relating to his correspondence with constituents and to reimbursement of his expenses by the county. He contended that he was a member of the judiciary and therefore was excluded from the scope of the former Open Records Act, article 6252-17a of Vernon's Texas Civil Statutes. This office noted that,

under the former Act, the definition of “governmental body” encompassed both “the commissioners court of each county” and “the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds[.]” Open Records Decision No. 204 at 1, *quoting* V.T.C.S. art. 6252-17a, § (2)(1)(B), (F). This office also acknowledged that, under the Act, “the Judiciary [was] not included within [the definition of governmental body].” *Id.*, *quoting* V.T.C.S. art. 6252-17a, § (2)(1)(G). However, “[t]he county judge is judge of the county court, and also is presiding officer of the commissioners court,” *id.*, and as such “is not a judicial officer only,” *Id.* at 2, *quoting* *Clark v. Finley*, 54 S.W. 343 (Tex. 1899), concluding:

The commissioners court is expressly included in the definition of governmental body . . . and the county judge is a part of the commissioners court. . . . Section 2(1)(F) makes every part of an organization, institution or agency supported by public funds a governmental body and subject to the [Open Records] Act. Accordingly, we believe each component of the commissioners court, *including the county judge*, is subject to the Act.

We do not believe that there is an irreconcilable conflict within the definition of ‘governmental body’ as to its application to the county judge as part of the commissioners court, and its exclusion of the judiciary from the Act. *We believe that information held by the county judge is subject to the Open Records Act except to the extent it pertains to cases and proceedings before the county court.* This construction of the Act is consistent with both the requirement that it be liberally construed in favor of granting any request for information and the exclusion of the judiciary from the Act.

See Tex. Const. Art. V, §§ 15,16, 17, 18; Gov’t Code §§ 552.001, 552.003(1)(A)(ii), (x) and (B); *see also* *Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.-- San Antonio, 1983, no writ). Accordingly, we conclude that, to the extent that the requestor seeks information that does not pertain to cases and proceedings before the constitutional county court, the county judge is subject to the Act.

Second, you contend that the Act does not require the county judge to provide access to information requested on such a broad, generalized basis. Rather, citing section 552.222 of the Government Code as authority, you contend that the requestor should be required to narrow the scope of his request to specify the type of correspondence sought or the specific subject matter of the requested correspondence.

It is well established that a governmental body may not disregard a request for records made pursuant to the Act merely because a requestor does not specify the exact documents desired.

Rather, a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. Open Records Decision No. 663 (1999). When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5. Thus, we do not agree that the broad nature of the present request is not permitted by the Act.

We have reviewed the request for information at issue. The request specifies the form of the information, the subject matter of the information, and the time frame for the creation or receipt of the requested information. The requestor states that he wants access to "any writing in any form (including electronic) produced or received by your office" regarding twenty-one identified subject matter areas during a specified time interval. The Act provides a presumptive right of access to *complete* information about the affairs of government -- in this instance, the county judge's office and employees. The requestor seeks to obtain this information on a daily basis through an open records request for all correspondence received or generated by the county judge. Consequently, we determine the county judge must release all responsive information for which you have raised no exception to disclosure.

We now address your assertions with respect to the submitted document. You assert that the item submitted is confidential by law under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You do not advise this office of any statute that you believe makes the information confidential, nor are we aware of any such statute. We have examined the document and conclude that it is not excepted from disclosure by section 552.101.

You also assert the litigation exception, section 552.103. Section 552.103(a) reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex.*

Law Sch. v. Texas Legal Found., 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). You have not demonstrated either that litigation is reasonably anticipated or that the submitted information relates to litigation for purposes of section 552.103(a). Therefore, you may not withhold the information under section 552.103.

You also claim that section 552.107 excepts the requested information. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* Thus, section 552.107(1) excepts from disclosure only factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client or to an associated attorney in the course of rendering legal services to the client. *Id.* at 7-8. The submitted document does not contain privileged information. The county judge must release Exhibit D. Because, in this case, the protection of section 552.111 is coextensive with that of section 552.107, we do not address section 552.111.

You must therefore release all of the requested information, including the submitted document, to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ch

Ref: ID# 133202

Encl. Submitted documents

cc: Mr. Charles Siderius
Denton Record-Chronicle
P.O. Box 369
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(w/o enclosures)